

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

**MV TRANSPORTATION, INC.**

**Employer**

**and**

**Case 12-RC-9044**

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
LOCAL 385, AFL-CIO**

**Petitioner**

**REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

The Employer, MV Transportation, Inc., contracts with transportation agencies to provide private, paratransit services to eligible clients meeting certain criteria. The Employer currently operates from two locations in Orlando, Florida: the operations center, located at 9313 Bachman Road, and the call center, located at 415 West Amelia Street.

On April 26, 2004, the Petitioner, International Brotherhood of Teamsters, Local 385, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. The Petitioner seeks to represent a unit of all full-time and regular part-time drivers, driver trainers, mechanics, dispatchers and utility employees.<sup>1</sup> The Employer contends that the unit must also include reservationists, schedulers and reconcilers, all of whom work at the call center, as well as road supervisors, who work at the operations center. On May 10, 2004, a hearing officer of the Board held a hearing at the Tampa Regional Office. Both parties participated and were given the opportunity to file post-hearing briefs.<sup>2</sup>

There are two main issues before me. First, the Employer claims that the positions in the petitioned-for unit do not have a separate community of interest from the positions the Employer seeks to additionally include, and that only the Employer's unit is an appropriate unit for collective

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<sup>1</sup> At the hearing, the Union amended the petition to include driver trainers and utility workers.

<sup>2</sup> The Union did not file a brief. The Employer's brief has been carefully reviewed.

bargaining. The Union disagrees, and claims that reservationists, schedulers and reconcilers are clerical positions that do not belong in the unit. Secondly, the Petitioner maintains that road supervisors are supervisors within the meaning of Section 2(11) of the Act, and therefore must be excluded. The Employer disagrees.

I have considered the evidence and the arguments presented by the parties. As explained below, I have concluded that reservationists, schedulers and reconcilers must be added to the petitioned-for unit, as must road supervisors, who are not statutory supervisors.<sup>3</sup> In Section I, I will present in detail the facts relevant to each of these two issues. In Section II, I will set forth my findings and the reasons supporting them.

## **I. Facts**

### **A. The Employer's Central Florida Operations and the Planned Consolidation**

The Employer serves Osceola, Seminole and Orange counties. Clients qualify for the Employer's services in these counties if they are medically needy pursuant to Florida Medicaid law, are determined "transport disadvantaged" or are eligible under the Americans with Disabilities Act.<sup>4</sup> The Employer is paid only for trips carrying clients, not for "dead heading," or trips without clients.

General manager Mike Radermacher oversees both the call center and the operations center. Four other managers run the operations center. The maintenance manager supervises mechanics and utility workers. The operations manager supervises "window dispatchers"<sup>5</sup> and all drivers.<sup>6</sup> The accounting manager supervises the reconcilers. The safety manager supervises the driver trainers and the road supervisors. The call center general manager supervises the dispatch manager and the reservationist/scheduling manager. The dispatch manager supervises the "live

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<sup>3</sup> The unit in which I am directing an election includes approximately 220 to 250 employees, as discussed further below in Section 1.B.

<sup>4</sup> According to the general manager of the call center, the Employer provides similar transportation services for clients in similar categories in 32 states.

<sup>5</sup> The terms "window dispatcher" and "live dispatcher" are explained below.

<sup>6</sup> The call center general manager testified that the operations manager supervises all 170 drivers.

dispatchers.”<sup>7</sup> The reservationist/scheduling manager supervises the reservationists and schedulers.

The operations center consists of a main building attached to the maintenance shop that has bays and a wash rack for the Employer’s vehicles. The main building has an office where window dispatchers work, separate offices for managers and a break room for all employees. Mechanics and utility employees work in the maintenance shop and bays. The Employer has a fleet of roughly 127 vehicles, including sedans and a variety of vans. The operations center is open 7 days per week, 24 hours per day.

The call center is located about seven miles from the operations center. Reservationists, schedulers and reconcilers have cubicles in a common office at the call center, separated from the live dispatchers by a wall. The reservationist/scheduling manager has her own office. It appears from the record that the dispatch manager shares the same work area as live dispatchers, though he has his own cubicle. The call center is also open seven days per week, but it appears from the record that no dispatchers work at the call center on weekends.

The call center occupies the third floor of the same building that houses the agency with which the Employer contracts, LYNX.<sup>8</sup> LYNX either rents or owns the space occupied by the call center, and it appears from the record that LYNX must vacate this space by no later than August 16, 2004. As a result, the Employer must relocate call center employees by that date.<sup>9</sup> The call center general manager testified that the Employer has not yet secured another site for call center employees, and plans to consolidate them with operations center employees. He testified that the Employer plans to place a trailer in the parking lot of the operations center, where the reservationists

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<sup>7</sup> There are currently nine live dispatchers at the call center and four window dispatchers at the operations center.

<sup>8</sup> Although the record does not clearly indicate what LYNX is, the Employer’s brief states that it is the Central Florida Regional Transportation Authority.

<sup>9</sup> The call center general manager testified at various points during the hearing that the Employer intends to relocate call center employees to the operations center by July 1, by August 1 and by August 16. It appears from the record that the major contingency is whether the Employer is awarded Medicaid contract work by the State of Florida.

and reconcilers will work after the relocation. He testified that schedulers and all dispatchers will work in the main operations center building after the relocation.

### **B. Positions in the Petitioned-for Unit**

The call center general manager testified that the Employer has 250 employees, of whom 170 are drivers.<sup>10</sup> Drivers bid periodically for shifts.<sup>11</sup> Driver shifts begin as early as 3:30 a.m. and end as late as 1 a.m. Upon reporting for work at the operations center, drivers first receive their daily manifest from a window dispatcher. The manifest shows the driver's routes for the day. Drivers then inspect their vehicles for any mechanical problems, and leave on their routes. Throughout their shifts, drivers communicate with live dispatchers by radio. Drivers are supposed to call the live dispatcher each time they pick up and drop off clients, but the call center manager testified that drivers often fail to do so. Drivers frequently speak to dispatchers to update their locations, report clients who failed to appear, etc. When dispatchers are not available, or if there has been a route or schedule change, drivers call a reservationist. Drivers also speak to schedulers concerning route changes and other schedule modifications. At the end of their shifts, most drivers bring their vehicles back to the operations center. A handful of drivers keep their vehicles at home because they live close to their first pick up.

Drivers receive \$8 per hour after completing initial training, and a \$.25 per hour raise after six months. They then receive annual raises of \$.25 per hour. The highest paid driver receives \$9 or \$9.25 per hour. Drivers receive bonuses not available to other employees. Drivers are eligible for a yearly \$200 safety bonus to reward safe driving, and two bonuses of \$40 per pay period to reward high attendance and productivity.<sup>12</sup>

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<sup>10</sup> According to the call center general manager, there are 8 or 9 mechanics, 6 or 7 utility workers, 13 dispatchers, 13 reservationists, 2 schedulers, 2 reconcilers and 4 road supervisors. It is not apparent from the record what accounts for the discrepancy between the sum of these employees, and the call center general manager's estimate of 250 total employees.

<sup>11</sup> The call center general manager testified that drivers have not bid for routes in the past year.

<sup>12</sup> The record does not reflect the criteria used to determine eligibility for driver bonuses.

Drivers must wear silver-gray uniform shirts, dark pants or shorts, and dark socks and shoes. Drivers must possess a valid, Class D Florida license, which requires that they undergo a physical examination conducted by the U.S. Department of Transportation every two years.<sup>13</sup> Other positions do not require a Class D license, although several employees hold such a license voluntarily.

The call center general manager testified that many employees who are not drivers started working for the Employer as drivers and obtained promotions to their current positions.

There are two types of dispatchers. "Live dispatchers" work from the call center, using the radio to communicate constantly with drivers concerning cancellations, add-ons, route changes, etc. Live dispatchers are separated by a wall from reservationists, schedulers and reconcilers because of the amount of noise they generate on the radio. "Window dispatchers" work mainly at the operations center and have face-to-face contact with drivers. They review driver manifests to make sure they are properly completed, then hand them to the driver at the start of the driver's shift. Window dispatchers provide vehicle keys and Nextel radios to drivers. All dispatchers start work as early as 3:30 a.m. It appears from the record that three live dispatchers work at the operations center as window dispatchers on weekends, and that one window dispatcher works occasionally at the call center as a live dispatcher.

Dispatchers receive \$13 per hour as a starting rate. The highest paid dispatcher receives \$15 per hour.

Mechanics and utility employees work at the operations center. Mechanics repair and maintain vehicles in the maintenance shop. Utility employees fuel vehicles and wash them at the wash rack. Shifts for mechanics begin as early as 3:30 a.m. and run around the clock. Utility workers usually work in the evenings after vehicles are returned, ending at 2 a.m.<sup>14</sup> Mechanics

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<sup>13</sup> It appears from the record that for employees already holding a typical (Class E) license, getting a Class D license requires only a written test, not a driving test.

<sup>14</sup> One utility worker occasionally refuels vehicles in the middle of the day.

receive \$12 or \$13 per hour to start. The highest paid mechanic receives \$15 or \$16 per hour.<sup>15</sup>

Utility workers start at \$7.25. The highest paid utility employee receives \$8 per hour.

Driver trainers work at the operations center and train new drivers. Both driver trainers started at \$10 per hour and currently receive \$11 per hour.

### **C. Positions the Employer Seeks to Add to the Unit**

#### ***1. Reservationists, Schedulers And Reconcilers***

Reservationists receive and respond to telephone calls from clients. They input reservations and other client information into the computer. Reservationists frequently use their Nextel two-way radios and telephones to call drivers and dispatchers on behalf of clients.<sup>16</sup> Reservationists also call clients to update them as to the arrival time of their drivers. When a client calls to report that a driver is behind schedule, or that the client is not ready or has changed addresses, the reservationist relays this information to the driver or dispatcher using a Nextel radio. When a client's reservation is incorrectly entered into the computer and the client insists on being picked up at a different time than scheduled, the reservationist contacts the driver to see if he can adjust his route, and if not, the reservationist contacts the dispatcher to secure an alternate pick-up arrangement. Reservationists also contact schedulers and dispatchers to arrange for a different driver than the one scheduled, or for a taxi to pick up a client. Reservationists sometimes contact mechanics to find out the progress of repairs and report this information back to clients.

There has been recent interchange between reservationists and positions in the Petitioner's unit.<sup>17</sup> Thus, a driver transferred to a position as reservationist about 10 months before the hearing, and a reservationist transferred to a position as dispatcher about 7 months before the hearing. Another reservationist substituted for a driver once or twice, a year before the hearing. About six to eight months before the hearing, two drivers became reservationists, then transferred back to driver

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<sup>15</sup> Some mechanics are called "lead mechanics." The parties stipulated, and I find based upon the record as a whole, that lead mechanics are not statutory supervisors.

<sup>16</sup> These are hand-held radios, whereas dispatchers use large, built-in radios.

<sup>17</sup> The only evidence in this regard is the testimony of the call center general manager.

positions. Two reservationists filled in for live dispatchers as recently as a month before the hearing. At the time of the hearing, a third reservationist was filling in for two live dispatchers once or twice a week while these two dispatchers were on maternity leave. Another reservationist transferred to dispatcher, though the record does not reflect when this occurred.<sup>18</sup> Several morning shift dispatchers have substituted for absent reservationists, although the record does not indicate when or how often they did so.

Reservationists are paid \$9 per hour to start. The highest paid reservationist receives \$10 per hour. They work from 6 a.m. to 6 p.m., seven days per week.

Schedulers create routes for drivers, using information from reservationists showing which clients need to be picked up at which times. Schedulers match routes and appropriate vehicles with drivers' manifests to maximize efficiency. Schedulers interact with drivers in performing their function, and incorporate driver suggestions for more efficient routes. Schedulers give completed driver manifests to window dispatchers.

One dispatcher substituted as a scheduler about four or five times, three to four months prior to the hearing.

Schedulers are paid \$13 per hour to start. Two schedulers receive \$15 per hour. They work from 11:30 a.m. to 7:30 p.m.

Reconcilers receive driver manifests after drivers return from each shift, and enter the times the driver picked up and dropped off each rider. Reconcilers ask drivers to explain discrepancies such as unusual delays between close stops.

There is no evidence that reconcilers have worked as drivers, mechanics or dispatchers. A dispatcher has filled in as a reconciler three or four times since October, 2003.

Reconcilers are paid \$9.75 per hour to start. Reconcilers work on weekends at the call center, and one reconciler works Saturdays at the operations center.

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<sup>18</sup> Another employee transferred about two months ago from driver to dispatcher, then back to driver.

## **2. Road Supervisors**

Road supervisors work at the operations center, under the supervision of the safety manger. They spend about 70% of their time driving routes, just like drivers, and about 10% riding along with, or following, drivers to observe and monitor their performance. For example, road supervisors ride along to observe driving habits and to watch how drivers tie down wheelchairs for disabled clients. Road supervisors occasionally follow drivers without notifying them, such as when the Employer receives more than three complaints in one month about a given driver. Road supervisors report their observations concerning drivers to the safety manager. It appears from the record that each driver must be observed by a road supervisor after 45 days, and then at 6 and 12 month intervals.

In addition to monitoring driver performance, road supervisors assist drivers. Road supervisors are the only employees on duty at the operations center from 3:30 a.m., when many drivers start work, until 5 a.m. or later, when some managers arrive. The call center general manager testified that drivers are instructed to contact a manager at home or by cell phone if a problem arises before 6 a.m., and that drivers have done so. The call center general manager also testified that drivers contact road supervisors throughout their shifts, using the Nextel radio, and that road supervisors “guide drivers via radio, give directions, support, and if the drivers have any issues they will go out there and help them.” For example, the call center general manager testified that when a driver calls about an irate client whom the driver cannot handle, the road supervisor “take[s] that client out of the vehicle and transport[s] them themselves.”

Road supervisors also have daily contact with mechanics and dispatchers, using the Nextel radio. If a mechanic is busy when a driver calls in to report a breakdown, the mechanic calls to ask the road supervisor to bring a substitute vehicle to the driver.<sup>19</sup> Similarly, dispatchers routinely call to ask road supervisors to assist drivers who report break downs or problems with clients.

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<sup>19</sup> The call center general manager testified that this is a regular occurrence.



Road supervisors prepare “incident reports.” Although the record contains no incident reports,<sup>20</sup> it appears that “incidents” usually involve drivers.<sup>21</sup> The record does not otherwise reflect the content of any incident reports, or the extent to which incident reports may result in discipline.

The call center general manager testified that road supervisors have no authority to discipline employees. He testified that only the general manager (Radermacher), the operations manager, the safety manager and the “office manager”<sup>22</sup> have authority to issue discipline. The call center general manager testified that when a road supervisor writes an incident report concerning a driver and recommends discipline, the safety manager conducts his own investigation, interviews witnesses, such as clients and the driver involved, and makes the determination whether to issue discipline to the driver without relying upon the road supervisor’s recommendation.

Road supervisors have no authority to hire, discharge, suspend, transfer, lay off, recall, assign, promote or reward employees, or adjust their grievances, or to effectively recommend such action. They have no authority to evaluate employees, or to approve leave requests or overtime, and they do not maintain employee time records.

Road supervisors are the only salaried employees in the unit sought by the Employer. The call center general manager testified that they receive “around ... \$11 an hour,” and he also testified that road supervisors are not eligible for overtime. Road supervisors share the same benefits as all employees, except that the Employer pays the health insurance premium for road supervisors, whereas all other non-management employees pay for coverage under the Employer’s health plan.

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<sup>20</sup> The employee handbook, (described below), defines an “incident” as “Any occurrence, event or action (regardless of how minor) which does not follow company procedures or presents a threat of problem to [the Employer], its passengers or its employees or may result in consequences, serious or not. Examples might be misbehavior of a student, signs of physical or mental abuse to a passenger, sexual harassment, etc.”

<sup>21</sup> The call center general manager testified that employees in various positions often complete incident reports concerning other employees, but he also testified that, “We receive hundreds of incident reports on drivers.”

<sup>22</sup> It appears from the record that the “office manager” refers to the reservationist/scheduling manager.

Road supervisors do not have offices or separate desks. They use the same parking facilities and break room as other employees. They do not attend supervisory meetings. Road supervisors are required to wear white uniform shirts.

All four current road supervisors started working for the Employer as drivers.

#### **D. Other Terms and Conditions of Employment**

All full-time employees other than road supervisors are paid hourly and are scheduled to work 40 hours per week.<sup>23</sup> All hourly employees receive automatic \$.25 per hour annual raises.<sup>24</sup> Drivers and mechanics are the only positions that frequently work overtime. The call center general manager testified that about 20% of the hours worked by drivers and mechanics are overtime hours, for which these employees are paid at time and a half.

All employees share the same health insurance, vacation benefits and 401K plan. All employees are governed by the same employee handbook and employment guidelines. Certain provisions of the handbook appear to apply only to drivers. For example, section 403, entitled "Safety Point System," states: *"Because our clients rely upon MV Transportation for qualified, well trained and safe **drivers**, a good safety record on the part of our **drivers** is essential for us to serve our clients in the safe professional manner that they expect. Therefore, all MV Transportation **drivers** are subject to a Safety Point Program rating which assesses cumulative points for safety infractions such as preventable accidents, DMV moving violations or Safety Citations given by MV Transportation safety staff and management."* (emphasis added). Despite this language, the call center general manager testified that it applies equally to any employee "doing an unsafe act."

All employees are supposed to attend monthly safety meetings at the operations center.<sup>25</sup> All employees are invited to the same company functions, such as barbecues to reward safety and the annual Christmas party.

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<sup>23</sup> The record does not reflect the hours worked by regular part-time drivers, although it appears they are scheduled for less than 40 hours per week.

<sup>24</sup> The record does not indicate whether road supervisors also receive these raises.

<sup>25</sup> Drivers often miss these meetings due to their work schedules.

### **E. Other Collective Bargaining Agreements with the Employer**

There is no evidence of a history of collective bargaining at the operations center or the call center.

The Petitioner introduced four current collective bargaining agreements covering certain of the Employer's facilities in California, negotiated by locals of the International Brotherhood of Teamsters.<sup>26</sup> In offering the agreements, the Petitioner's representative cited their recognition language, and offered a brief explanation of the Petitioner's belief as to the relevance of this evidence: "They [the Employer] don't have them [the positions the Employer seeks to add] anywhere else, why do they want to throw them in here." One agreement includes drivers and excludes "dispatchers, trainers, supervisors, managerial, administrative, road supervisors, reservationists, schedulers, mechanics, fuelers, washers, maintenance employees, security and clerical employees as defined in the ... Act." Another agreement includes drivers and excludes "office clerical employees, professional employees, dispatch personnel, confidential employees, guards and supervisors as defined in the Act." A third agreement includes drivers and excludes "all other administrative, clerical, reservationists and dispatch employees, maintenance employees, guards and supervisors as defined under ... the Act."

The record contains no evidence as to whether or not the units involved in the California agreements were certified by the Board, or whether or not their composition and scope were litigated. There is no evidence in the record of how the facilities covered by the agreements operate, or of the terms and conditions of employment for employees outside the bargaining units defined in the California agreements.

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<sup>26</sup> The agreements cover certain employees at the Employer's operations in Livermore, Modesto, Pinole and the County of Merced.

## **II. Analysis**

### **A. Community Of Interest**

In determining whether employees in a petitioned-for unit share a community of interest separate and apart from those outside the unit, the Board looks to criteria including similarity in the employees' skills and functions, similarity in the scale and manner of determining earnings, similarity in benefits and working conditions, the frequency of contact and interchange among employees, the degree of functional integration, geographic proximity, common supervision and any history of collective bargaining. See Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962). The Petitioner's unit need not be the most appropriate unit, as long as it is an appropriate unit. Dezcon, Inc., 295 NLRB 109, 111 (1989). The issue here is whether, applying the above factors, the positions in the Petitioner's unit share a community of interest distinct from reservationists, schedulers, reconcilers and road supervisors. For the following reasons, I find that the positions in the Petitioner's unit lack a separate community of interest from those the Employer seeks to add to the unit.

First, all the full-time employees share many terms and conditions of employment. All except road supervisors are hourly paid, work 40 hours per week (excluding overtime) and receive \$.25 per hour annual raises, as well as the same health insurance, vacation and 401K plan. Although road supervisors are salaried and those do not pay health insurance premiums, those factors alone do not preclude them from sharing a community of interest with the other positions. See Aurora Fast Freight, 324 NLRB 20, 21 (1997). Road supervisors earn about \$11 per hour, which is roughly midway between the starting hourly rates of the positions the Petitioner seeks to represent. Thus, drivers start at \$8 per hour after training, and dispatchers and mechanics start at \$13 per hour. The starting hourly wage rates of the other positions in the Employer's proposed unit, (\$9 for reservationists, \$9.75 for reconcilers and \$13 for schedulers), fall between those of positions the Petitioner seeks to represent. All positions in the Employer's unit attend the same employee safety meetings and Employer functions such as barbecues, and all are subject to the same employee

handbook. Although Section 403 of the handbook appears to apply only to drivers, employees in other positions substitute for drivers, as set forth below, and the remaining portions of the handbook apply to all positions.

Certain terms and conditions of employment that apply to some positions the Employer seeks to add, also apply to some of the positions in the Petitioner's unit. For example, road supervisors and drivers are required to wear uniforms, so wearing a uniform does not support finding a distinct community of interest among positions within the unit the Petitioner seeks to represent. Although the Employer pays health insurance premiums for road supervisors, drivers receive attendance and safety bonuses not available to other positions within the Petitioner's unit. Although drivers and mechanics work frequent overtime, dispatchers do not, so overtime work does not create a separate community of interest among positions in the Petitioner's unit.

Secondly, the work performed by reservationists, schedulers, reconcilers and road supervisors is closely integrated with the work of drivers, dispatchers and mechanics. Thus, reservationists, schedulers, dispatchers, drivers, reconcilers and mechanics work together to ensure that clients are picked up on time, transported in a timely manner to the proper destinations and returned to their residences. When a client calls a reservationist to report a problem such as a late pick-up or add-on, the reservationist uses the Nextel radio and the phone to interact with drivers and dispatchers to solve the problem. If the driver cannot address the problem, the reservationist and dispatcher arrange for another solution, such as an alternate driver or a taxi. Drivers report breakdowns to a dispatcher or reservationist, who contacts a mechanic. Road supervisors speak with the mechanic repairing the breakdown as well as a dispatcher, and often bring another vehicle to help carry the affected clients.

Similarly, schedulers interact with drivers when matching reservations and vehicles with driver manifests to create an efficient route. Reconcilers interact with drivers when receiving driver manifests at the end of the driver's shift, and when resolving discrepancies in the manifest.

In short, the service the Employer provides depends upon a high degree of functional integration between all positions, those in the unit sought by the Petitioner as well as those additional positions in the Employer's unit.

In applying community of interest factors, the Board has held that a high degree of functional integration requires the inclusion of additional positions with those sought by the petitioning labor organization. J.C.Penney Co., 328 NLRB 766, 768 (1999) (high degree of functional integration requires inclusion of telemarketing employees in unit of employees at catalog fulfillment center, despite separate supervision and hours of work, and seasonal nature of telemarketers' employment); Transerv Systems, 311 NLRB 766, 766 (1993) (high degree of functional integration requires inclusion of drivers with bicycle messengers).

Furthermore, in the year prior to the hearing, there was some interchange between positions in the unit the Petitioner seeks to represent and the additional positions in issue. A driver transferred to reservationist and a reservationist transferred to dispatcher. Two drivers temporarily transferred to reservationists, then transferred back to driver positions. Two reservationists filled in for live dispatchers, and at the time of the hearing, a third reservationist was doing so once or twice per week for dispatchers on maternity leave. Also, a reservationist substituted for a driver, and several morning shift dispatchers substituted for absent reservationists. Similarly, a dispatcher substituted as a scheduler four or five times, and a dispatcher substituted as a reconciler three or four times. The evidence of interchange weighs in favor of finding that positions in the Petitioner's unit do not share a community of interest distinct from the additional positions in the Employer's unit.

Although the call center and the operations center are seven miles apart, the Petitioner seeks to represent all dispatchers, including live dispatchers who work at the call center. Thus, the factor of geographic proximity does not indicate a separate community of interest within the Petitioner's unit. I note that the call center general manager testified that all call center employees must vacate their current location by about mid-August, 2004, and that the Employer intends to relocate reservationists and reconcilers to a trailer on the grounds of the operations center and place

schedulers and live dispatchers inside the operations center itself. It therefore appears that, by no later than mid-August, all employees will share the same geographic location.

The factor of supervision does not establish a separate community of interest within the Petitioner's unit. The safety manager supervises driver trainers, a position in the Petitioner's unit, and road supervisors, a position the Employer seeks to add. Although reservationists, schedulers and reconcilers are supervised in certain respects separately from positions in the Petitioner's unit, employees in all positions can only be disciplined or discharged by the general manager, operations manager, safety manager and office manager. The Petitioner's unit itself combines positions subject to different supervision. Drivers, who comprise by far the largest number of employees in the Petitioner's unit, are supervised by the operations manager, as are window dispatchers. Live dispatchers are supervised by the dispatch manager. Mechanics and utility workers are supervised by the maintenance manager. Driver trainers are supervised by the safety manager. In view of the dispersed supervision of positions in the unit sought by the Petitioner, it is of little consequence that the Employer seeks to add positions supervised by the reservationist/scheduling manager and the accounting manager.

The Petitioner contends that reservationists, schedulers and reconcilers are clerical employees, and that this distinguishes them from positions in the Petitioner's unit. There is no evidence in the record of special skills or qualifications required for reservationists, schedulers or reconcilers, nor does the record support a finding that they are "office clerical" employees. While these employees work in office cubicles and use computers, they are separated by only a wall from the live dispatchers, whose work is noisy. Reservationists likewise work in a noisy environment since they speak to clients constantly by phone and frequently use Nextel radios to speak with drivers and dispatchers.

In view of the high degree of functional integration and the interchange set forth above, as well as the similarity of overall terms and conditions of employment, the positions in the petitioned-

for unit do not share a community of interest distinct from that shared with the positions the Employer seeks to add to the unit. Transerv Systems, 311 NLRB at 766.

There is no history of collective bargaining at the Employer's facilities in central Florida. The collective bargaining agreements with the Employer's California facilities shed no light on which central Florida positions share a community of interest. There is no evidence that the units set forth in the California agreements resulted from litigated Board proceedings. There is also no evidence of terms and conditions for employees outside the units recognized in these agreements, or of how the California facilities operate. The Petitioner's affiliated local unions representing units in Pinole, Modesto and the County of Merced expressly exclude dispatchers from those bargaining units, unlike the Petitioner's unit here. Even assuming, for the sake of argument, that the California and central Florida facilities operate similarly, the community of interest within units *excluding* dispatchers is not the same as one within a unit *including* them. Thus, the California agreements do not affect my analysis.

In United Rentals, 341 NLRB No. 72 (2004), the union sought to represent a unit of mechanics, yard employees and drivers, excluding counter employees, the parts associate and the branch associate at one of the employer's facilities. Employees in the petitioned-for unit were subject to separate immediate supervision, although the branch manager had overall authority concerning hiring, firing, discipline and evaluations. The regional director found that the petitioned-for unit was appropriate, finding the work performed by counter employees clerical, as distinguished from the manual work performed by mechanics, yard employees and drivers, and finding the evidence of interchange "occasional" and "limited." Slip op. at pp. 2-3.

The Board reversed the regional director and found that the smallest appropriate unit included all employees at the facility. The Board relied on "overwhelming and undisputed evidence of overlapping duties and interchange between the excluded employees and the petitioned-for employees," as well as "their common terms and conditions of employment." Slip op. at p. 2. The Board noted that despite their different classifications, all employees "pitched in" regularly to perform



each other's functions as needed, and that counter employees even substituted for yard employees who were ill.

As in United Rentals, other classifications "pitch in" to assist drivers and dispatchers, and reservationists serve as communications conduits between clients and drivers or dispatchers when a client is late or when a reservation has been incorrectly booked. Furthermore, road supervisors drive routes 70% of their work time. Also, as in United Rentals, the positions the Employer seeks to add to the unit share common overall terms and conditions of employment with the petitioned-for employees.

In summary, I find that the drivers, dispatchers, mechanics, utility employees and driver trainers do not share a community of interest separate and apart from the reservationists, schedulers, reconcilers and road supervisors.

#### **B. Supervisory Status Of Road Supervisors**

The party seeking to exclude an employee as a statutory supervisor carries the burden of proving that the employee exercises supervisory authority. NLRB v. Kentucky River Community Care, 532 U.S. 706 (2001). Thus, the Petitioner must demonstrate that road supervisors have the authority to perform, or effectively recommend, at least one of the 12 functions listed in Section 2(11) of the Act, and that they do so in a manner that requires the use of "independent judgment" and is "in the interest of the Employer." For the following reasons, I find that the Petitioner has failed to establish that road supervisors are supervisors under the Act.

The record contains no evidence that road supervisors hire, transfer, suspend, lay off, recall, promote, assign, discharge, reward or adjust grievances for other employees.

There is no evidence that road supervisors discipline drivers. Although road supervisors monitor drivers, ride along with them, occasionally follow them without notice, and complete incident reports for the safety manager describing their observations, it appears from the record that the safety manager investigates each incident independently of the road supervisor's recommendations and makes his own determination as to whether discipline is warranted. Absent any evidence that

the safety manager gives significant weight to a road supervisor's recommendations, the fact that a road supervisor monitors a driver and gives the safety manager an incident report concerning that driver does not demonstrate that the road supervisor effectively recommends discipline. Thus, there is insufficient evidence to establish that road supervisors effectively recommend discipline. Ryder Truck Rental, 326 NLRB 1386, 1387 (1998) (insufficient evidence that technician in charge disciplined employees when he reported occurrences to service team leader, and service team leader conducted independent investigation before determining discipline); Greyhound Airport Services, 189 NLRB 291, 293-4 (1971) (dispatchers were not supervisors even though they recommended discipline for drivers, because operations manager or other acknowledged supervisor conducted independent investigations).

Although road supervisors "guide" and "support" drivers, give directions and even assist with unruly clients, there is no evidence that such direction requires the use of independent judgment. Instead, it appears that road supervisors act pursuant to the Employer's established procedures, and that their guidance for drivers is "routine," such as giving driving directions. Although assisting drivers with unruly clients could conceivably require the use of some independent judgment, there is no evidence of this in the record, and I find there is insufficient evidence to establish that road supervisors direct the work of drivers using independent judgment. Bay Area- Los Angeles Express, 275 NLRB 1063, 1075-1076 (1985) (adopting administrative law judge's finding that dispatcher did not exercise independent judgment in directing drivers, where dispatcher instructed one driver to reload freight to avoid damage and told another driver to take detour during inclement weather); Greyhound Airport Services, 189 NLRB 291, 293 (1971) (dispatchers were not supervisors, even though they gave directions to drivers in accord with employer's established policies and prepared written complaint reports when they observed drivers violate rules, including one on a driver who was observed speeding).

Although road supervisors are the only employees at the operations center for drivers to contact between 3:30 a.m. and about 5 a.m., that factor alone does not indicate their supervisory

status, especially since drivers are instructed to contact managers at home during those hours. See Ryder Truck Rental, 326 NLRB 1386, 1387 n. 8 (supervisory status not established where technician in charge was highest ranking employee at facility for 30 hours each week because service team leader, admitted supervisor, was “on call” 24 hours a day and always available by phone).

In summary, there is insufficient evidence that road supervisors are supervisors within the meaning of Section 2(11) of the Act.

I, therefore, find that the appropriate unit includes drivers, dispatchers, mechanics, utility employees, driver trainers, road supervisors, reservationists, schedulers and reconcilers.

### **III. Conclusions**

Based upon the foregoing, and the record as a whole, I conclude:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.<sup>27</sup>
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. Based upon the record, I find that the the following unit is appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, mechanics, dispatchers, utility employees, driver trainers, road supervisors, reservationists, schedulers and reconcilers employed at the Employer’s facilities currently located at 9313 Bachman Road and 415 West Amelia Street in

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<sup>27</sup> The parties stipulated as follows at the hearing: The Employer is a California corporation engaged in the operation of bus and paratransit services, with its principal office and place of business located in Fairfield, California, and with facilities located in Orlando, Florida. During the past 12 months, which period is representative of its annual operations described above generally, the Employer derived gross revenues valued in excess of \$500,000, and purchased and caused to be transported and delivered to its Orlando, Florida facilities goods valued in excess of \$50,000 directly from points outside the State of Florida.

Orlando, Florida; excluding office clerical employees, guards, and supervisors, as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among employees in the unit found appropriate above. The employees will vote on the question of whether or not they wish to be represented by the International Brotherhood of Teamsters, Local Union No. 385, AFL-CIO for the purposes of collective bargaining. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this decision.

#### **A. Voter Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that began less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly it is hereby directed that within 7 days of this Decision, the Employer must submit to the Regional Office, two copies of an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 201 East Kennedy Boulevard, Suite 530, Tampa, Florida 33602-5824, on or before June 14, 2004. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuously visible to potential voters for a minimum of 3 full working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). An employer who fails to do so may not file objections based on the non-posting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W. Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST, on June 21, 2004. This request may not be filed by facsimile.

DATED at Tampa, Florida, this 7<sup>th</sup> day of June 2004.

/s/[Rochelle Kentov]  
Rochelle Kentov, Regional Director  
National Labor Relations Board, Region 12  
201 E. Kennedy Boulevard, Suite 530  
Tampa, FL 33602